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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,600	07/30/2003	Patrick F. King	1024-002	8696

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EXAMINER

DEVORE, PETER T

ART UNIT PAPER NUMBER

3751

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,600

Applicant(s)

KING ET AL.

Examiner

Peter T deVore

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-28, 30 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-16 and 32-36 is/are allowed.
- 6) ☒ Claim(s) 1-13, 18-28 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/28/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13, 18-28, and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The positively recited method step "at least one peg is inserted into the ground" appearing in apparatus claims 1 and 18 renders those claims (and the claims depending therefrom) indefinite. For examination purposes, the term "inserted" will be read as "insertable".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 9-13, 18, 19, 22, 26-28, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Russell.

The Russell reference discloses an apparatus comprising four sides foldable connected as claimed (see Figure 3), handles 26 and 27, "attachments" (top surfaces of the sides), and pegs 24, 28, and 29 which are inherently insertable into the ground.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell in view of Boyle.

The Russell reference discloses an apparatus as discussed supra, but does not disclose third and fourth handles at the upper portions of the first and third sides. However, attention is directed to the Boyle reference, which discloses a similar apparatus having third and fourth handles 36 as claimed for improved flexibility as to from where the apparatus can be grasped. It would have been obvious to include third and fourth handles as claimed on the Russell device in view of Boyle for improved flexibility as to from where the apparatus can be grasped.

Claims 3, 4, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell in view of Hoerner.

The Russell reference discloses an apparatus as discussed supra, but does not disclose third and fourth handles at the lower portions of the first and third sides.

However, attention is directed to the Hoerner reference, which discloses a similar apparatus having third and fourth handles 19 as claimed for improved flexibility as to from where the apparatus can be grasped. It would have been obvious to include third and fourth handles as claimed on the Russell device in view of Hoerner for improved flexibility as to from where the apparatus can be grasped.

Claims 7, 8, 24, and 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Russell in view of Boyle as applied to claims 6 and 23, and further in view of Hoerner.

The Russell reference discloses an apparatus as discussed supra, but does not disclose fifth, sixth, and seventh handles at the lower portions of the first and third sides. However, attention is directed to the Hoerner reference, which discloses a similar apparatus having handles 19 at the lower portions of the sides as claimed for improved flexibility as to from where the apparatus can be grasped. It would have been obvious to include fifth, sixth, and seventh handles as claimed on the modified Russell device in view of Hoerner for improved flexibility as to from where the apparatus can be grasped.

Allowable Subject Matter

Claims 14-16 and 32-36 are allowed.

Response to Arguments

Applicant argues that the allowable subject matter indicated in claim 17, when added to claims 1 and 18, makes those claims also allowable. However, the subject

matter in claim 17 is a method step and thus does not overcome a rejection of an apparatus claim when the prior art apparatus is capable of performing the claimed method.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

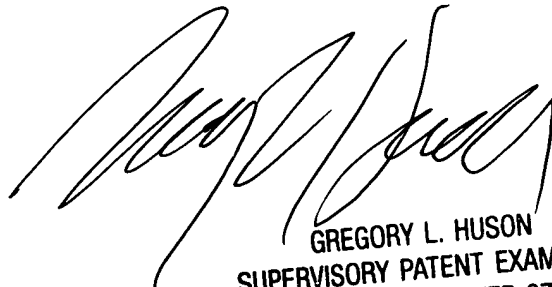
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T deVore whose telephone number is (703) 306-5481. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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